

## **Money Laundering & Identity Theft Legislation**

DOJ has previously requested preparation of money laundering legislation. The proposed "Financial Anti-Terrorism Act of 2001." H.R. 3004 will make several changes to federal laws related to money laundering. This bill contains includes numerous provisions that relate to banking regulations, currency smuggling, counterfeiting, and foreign money laundering. Those matters are best addressed through federal legislation.

We should seek legislation based upon Section 118 "Prohibition on False Statements to Financial Institutions Concerning the Identity of a Customer." This provision does not impose additional burdens upon financial institutions. Instead, it penalizes individuals who provide false statements to financial institutions. Through false statements to financial institutions, individuals are able to engage in identity theft and money laundering.

The federal legislation appears below. LRB must make tailor the language to Wisconsin law. For present purposes, I would treat this conduct as a Class E felony. This proposed language should be included with the money laundering language. Alternatively, it could appear adjacent to sec. 943.20, "Misappropriation of personal identifying information or personal identification documents."

### **SEC. 118. PROHIBITION ON FALSE STATEMENTS TO FINANCIAL INSTITUTIONS CONCERNING THE IDENTITY OF A CUSTOMER.**

(a) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by inserting after section 1007 the following:

#### **"§ 1008. False statements concerning the identity of customers of financial institutions**

"(a) IN GENERAL.—Whoever, in connection with information submitted to or requested by a financial institution, knowingly in any manner—

"(1) falsifies, conceals, or covers up, or attempts to falsify, conceal, or cover up, the identity of any person in connection with any transaction with a financial institution;

"(2) makes, or attempts to make, any materially false, fraudulent, or fictitious statement or representation of the identity of any person in connection with a transaction with a financial institution;

"(3) makes or uses, or attempts to make or use, any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry concerning the identity of any person in connection with a transaction with a financial institution; or

"(4) uses or presents, or attempts to use or present, in connection with a transaction with a financial institution, an identification document or means of identification the possession of which is a violation of section 1028; shall be fined under this title, imprisoned not more than 5 years, or both.

"(b) DEFINITIONS.—In this section, the following definitions shall apply:

"(1) FINANCIAL INSTITUTION.—The term 'financial institution'—

"(A) has the same meaning as in section 20; and

"(B) in addition, has the same meaning as in section 5312(a)(2) of title 31, United States Code.

**“(2) IDENTIFICATION DOCUMENT.—**The term ‘identification document’ has the same meaning as in section 1028(d).

**“(3) MEANS OF IDENTIFICATION.—**The term ‘means of identification’ has the same meaning as in section 1028(d).”.

**(b) TECHNICAL AND CONFORMING AMENDMENTS.—**

**(c) (1) TITLE 18, UNITED STATES CODE.—**Section 24

1956(c)(7)(D) of title 18, United States Code, is 2550

amended by striking “1014 (relating to fraudulent loan” and inserting “section 1008 (relating to false statements concerning the identity of customers of financial institutions), section 1014 (relating to fraudulent loan”.

**(2) TABLE OF SECTIONS.—**The table of sections for chapter 47 of title 18, United States Code, is amended by inserting after the item relating to section 1007 the following:

**“1008. False statements concerning the identity of customers of financial institutions.”.**

Date: October 23, 1995

To: Matt Frank

From: Don Latorraca

Subject: Money Laundering (LRB-0230/1)

Attached are the changes to the proposed money laundering legislation (LRB-0230/1).

First, I amended the definition section. To the definition of "monetary instrument," I added language which would include precious metals, stones, and jewelry in the definition. I also considered extending this term to include electronic money ("e-money"). Alan has checked with his NAAG/USDOJ contacts. Unfortunately, no one has developed a good working definition of "e-money." Because this bill should move forward, I do not believe that we should take the additional time to define it. ✓

Further, in this draft, we no longer defined the criminal conduct underlying the money laundering as a "specified unlawful activity" but as a "felony." ✓

Finally, at Roy's suggestion, I also defined "transactions." This definition reaches situations in which money is deposited in safety deposit boxes--something which would not be covered if we relied upon the usual dictionary definitions. This definition derives from legislation in other jurisdictions including the federal money laundering statute (18 U.S.C. §1956(b)(3) and the Model Money Laundering Act (MMLA). (C) ✓

Roy recommended defining "proceeds" using a definition from the MMLA. I have ambivalent feelings about defining "proceeds." In Wisconsin, we currently use the term "proceeds" in forfeiture and the racketeering statutes without defining it. Such language has not given prosecutors problems. However, Wisconsin law enforcement officers and prosecutors have not typically dealt with proceeds of a crime which have transformed themselves from cash to a bank account credit to a wire transfer to a cash withdrawal. Interestingly, though the federal money laundering laws do not define "proceeds," federal courts have not had difficulties dispensing with vagueness challenges. See eg. United States v. Jackson, 983 F.2d 757 (7th Cir. 1993) (recognizing that proceeds includes proceeds which have been commingled with funds from legitimate sources). Though I remain open to the possibility of including such a definition, I have not included a definition of proceeds in this draft.

see if  
feds define  
it now

Matt Frank  
October 23, 1995  
Page 2

Second, to conform the draft's language regarding knowledge to standard statutory definitions, I have substituted the language "reason to know" for "reason to believe." See sec. 939.23.

Third, based upon your suggestions, I have clarified the knowledge requirement in sec. 946.78(3). Hopefully, this language adequately addresses situations in which the launderer believed that the criminal derived the proceeds from one type of crime (ie. gambling) when in fact he derived them from some other type of crime (ie. drug dealing).

I have not made any other changes to the LRB draft. Please let me know if you have any other questions regarding this matter.

**Proposed Changes to LRB-0230/1**

[Section 1 of the proposal remains unchanged.]

**SECTION 1.** 939.32(1) of the statutes is created to read:

**939.32(1)(f)** Whoever attempts to commit a crime under s. 946.78 is subject to the penalty provided in that section for the completed act.

[Section 2 of the proposal should be amended as follows:]

**SECTION 2:** 946.78 of the statutes is created to read

946.78 **Money Laundering.** (1) In this section:

(a) "Monetary instrument" ~~means~~ includes, but is not limited to any of the following:

1. Coin or currency of the United States or any other country.

2. Traveler's check, personal check, money order or share draft or other draft for payment.

3. Investment security or negotiable instrument, in bearer form or other form that provides that title to the security or instrument passes upon delivery of the security or instrument.

4. Precious metals, stones, or jewels.

(b) "~~Specified unlawful activity~~Felony" includes any act punishable as a felony under the laws of this state or, if the act occurred within another jurisdiction and is

punishable by imprisonment for one year or more under the laws of the other jurisdiction.

(c) "Transactions" includes, but is not limited to, a purchase, sale, trade, loan, pledge, investments, gift, transfer, transmission, delivery, deposit, withdrawals, payment, transfer between accounts, exchange of currency, extension of credit, purchase or sale of any monetary instruments, use of a safe deposit box, or any other acquisition of deposition of property by whatever means effected.

(2) Whoever does any of the following is subject to

(a) Receives or acquires proceeds, or engages in a transaction involving proceeds, which the person knows or ~~reasonably believes~~ has reason to know are derived from a ~~specified unlawful activity~~ felony and knows or has reason to know that the receipt or acquisition of the proceeds or the transaction is designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership or control, of the proceeds of the ~~specified unlawful activity~~ felony.

(b) Gives, sells, transfers, trades, invests, conceals, possesses, transports, or otherwise makes available one or more monetary instruments that the person knows or ~~reasonably believes~~ has reason to know ~~are~~ is intended to be

used to commit or further the commission of a ~~specified unlawful activity~~ felony.

(c) Directs, plans, organizes, initiates, finances, manages, supervises, or facilitates the transportation or transfer of proceeds that the person knows or ~~reasonably believes~~ has reason to know are derived from a ~~specified unlawful activity~~ felony and knows or has reason to know that the transportation or transfer is designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership or control, of the proceeds of the ~~specified unlawful activity~~ felony.

~~(3) The state is not required to prove that a person prosecuted under this section knew, or had a reasonable belief the particular offense constituting a specified unlawful activity from which the proceeds were derived. The state is not required to prove that a person knew, or had reason to know, that the particular act from which the proceeds are derived constituted a felony. The state need only prove that the person knew, or had reason to know, that the property involved in the transaction represented the proceeds from some form, though not necessarily which form, of activity that constitutes a felony as defined under subsec. (1)(b).~~

(4) Whoever violates sub. (2) may be fined not more

than \$10,000 or twice the value of the proceeds or monetary instruments involved in the violation, whichever is greater, or imprisoned for not more than 10 years or both.

[Section 3 remains unchanged.]

**SECTION 3.946.82(4)** of the statutes is amended to read:

946.82(4) "Racketeering activity" means any activity specified in 18 USC 1961 (1) in effect . . . 946.78, . . .

[Section 4 remains unchanged.]

**SECTION 4.971.367** of the statutes is created to read:

**971.367 Crimes involving money laundering.** In any case under s. 946.78 involving more than one violation, all violations may be prosecuted as a single crime if the violations were pursuant to a single intent and design.

1995 - 1996 LEGISLATURE

By Tues.

2001 BILL

1995 ASSEMBLY BILL

D-Note

This is a preliminary draft. An analysis will be provided in a later version.

making false statements to financial institutions,

REGEN

1 AN ACT ~~to amend~~ 946.82 (4); and ~~to create~~ 939.32 (1) (f), 946.78 and 971.367 of  
2 the statutes; relating to: money laundering and providing a penalty.

*Analysis by the Legislative Reference Bureau*

Current law provides various penalties for theft and related property crimes. This bill prohibits various types of money laundering and provides penalties for violations. Examples of the money laundering that the bill prohibits include: 1) acquiring proceeds that a person knows or has reason to know are derived from felonious activity, if the person knows or has reason to know the acquisition is designed to conceal the nature, location, source, ownership or control of the proceeds; 2) transferring or possessing currency or other monetary instruments that a person knows or has reason to know are intended to be used to commit a felony; and 3) planning the transfer of proceeds that a person knows or has reason to know are derived from felonious activity, if the person knows or has reason to know that the transfer is designed to conceal the nature, location, source, ownership or control of the proceeds. Violators may be fined not more than \$10,000 or not more than twice the value of the proceeds or monetary instruments (whichever is greater) or may be imprisoned for not more than 10 years or both.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

3 SECTION 1. 939.32 (1) (f) of the statutes is created to read:  
4 939.32 (1) (f) Whoever attempts to commit a crime under s. 946.78 is subject  
5 to the penalty provided in that section for the completed act.

6 SECTION 2. 946.78 of the statutes is created to read:

1           **946.78 Money laundering.** (1) In this section:

2           (a) "Felony" means any act punishable as a felony under the laws of this state  
3 or, if the act occurred within another jurisdiction, any act punishable by ~~imprison-~~<sup>incarceration</sup>  
4 ~~ment~~ for one year or more under the laws of the other jurisdiction.

5           (b) "Monetary instrument" includes any of the following:

- 6           1. Coin or currency of the United States or any other country.
- 7           2. Traveler's check, personal check, money order, <sup>✓</sup>or share draft or other draft  
8 for payment.
- 9           3. Investment security or negotiable instrument, in bearer form or other form  
10 that provides that title to the security or instrument passes upon delivery of the secu-  
11 rity or instrument.

12          4. Precious metals, stones, <sup>✓</sup>or jewels.

13          (c) "Transaction" means the acquisition or disposition of property by any  
14 means, including any of the following:

15          1. The purchase, sale, trade, transfer, transmission, exchange, loan, pledge,  
16 investment, delivery, deposit, <sup>✓</sup>or withdrawal of a monetary instrument.

17          2. The use of a safe deposit box.

18          3. The extension of credit.

19          (2) Whoever does any of the following is subject to the penalties under sub. <sup>✓</sup>(4):

20          (a) Receives or acquires proceeds, or engages in a transaction involving pro-  
21 ceeds, that the person knows or has reason to know are derived from a felony, if the  
22 person also knows or has reason to know that the receipt or acquisition of the pro-  
23 ceeds or the transaction is designed in whole or in part to conceal or disguise the  
24 nature, location, source, ownership, <sup>✓</sup>or control of the proceeds of the felony.

① (b) Gives, sells, transfers, trades, invests, conceals, possesses, transports, or  
2 otherwise makes available one or more monetary instruments that the person knows  
3 or has reason to know are intended to be used to commit or further the commission  
4 of a felony.

⑤ (c) Directs, plans, organizes, initiates, finances, manages, supervises, or facili-  
6 tates the transportation or transfer of proceeds that the person knows or has reason  
7 to know are derived from a felony, if the person also knows or has reason to know that  
8 the transportation or transfer is designed in whole or in part to conceal or disguise  
9 the nature, location, source, ownership, or control of the proceeds of the felony.

Insert 3-9 10 (3) In a prosecution under this section, the state is required to prove that the  
11 person being prosecuted knew, or had reason to know, that the property involved in  
12 a transaction represents proceeds from some form of an activity that constitutes a  
13 felony, but the state is not required to prove any of the following:

14 a. That a person being prosecuted under this section knew, or had reason to  
15 know, that the property represents proceeds from a particular form of the activity  
16 that constitutes a felony.

17 b. That a person being prosecuted under this section knew, or had reason to  
18 know, that the particular act from which the proceeds were derived constituted a fel-  
19 ony.

20 (4) Whoever violates sub. (2) may be fined not more than \$10,000 or twice the  
21 value of the proceeds or monetary instruments involved in the violation, whichever  
22 is greater, or imprisoned for not more than 10 years or both.

Insert 3-22 23 SECTION 3. 946.82(4) of the statutes, as affected by 1995 Wisconsin Act .... (Sen-  
24 ate Bill 130), is amended to read:

1 946.82 (4) "Racketeering activity" means any activity specified in 18 USC 1961  
2 (1) in effect as of April 27, 1982 or the attempt, conspiracy to commit, or commission  
3 of any of the felonies specified in: chs. 161 and 945 and ss. 49.49, 134.05, 139.44 (1),  
4 180.0129, 181.69, 184.09 (2), 185.825, 215.12, 221.17, 221.31, 221.39, 221.40, 551.41,  
5 551.42, 551.43, 551.44, 553.41 (3) and (4), 553.52 (2), 940.01, 940.19 (3) to (6), 940.20,  
6 940.203, 940.21, 940.30, 940.305, 940.31, 941.20 (2) and (3), 941.26, 941.28, 941.298,  
7 941.31, 941.32, 943.01 (2) or (2g), 943.012, 943.013, 943.02, 943.03, 943.04, 943.05,  
8 943.06, 943.10, 943.20 (3) (b) to (d), 943.23 (1g), (1m), (1r), (2) and (3), 943.24 (2),  
9 943.25, 943.27, 943.28, 943.30, 943.32, 943.34 (1) (b) and (c), 943.38, 943.39, 943.40,  
10 943.41 (8) (b) and (c), 943.50 (4) (b) and (c), 943.60, 943.70, 944.21 (5) (c) and (e),  
11 944.32, 944.33 (2), 944.34, 945.03, 945.04, 945.05, 945.08, 946.10, 946.11, 946.12,  
12 946.13, 946.31, 946.32 (1), 946.48, 946.49, 946.61, 946.64, 946.65, 946.72, 946.76,  
13 946.78, 947.015, 948.05, 948.08, 948.12 and 948.30.

14 SECTION 4. 971.367 of the statutes is created to read:

15 **971.367 Crimes involving money laundering** In any case under s. 946.78

16 involving more than one violation, all violations may be prosecuted as a single crime

17 if the violations were pursuant to a single intent and design.

18 (END)

D-note  
↓

(B) → and false statements  
to financial institutions

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-4081/P1dn

RLR:.....

*JK*

I changed proposed s. 946.78 (3) ~~stats.~~ <sup>✓</sup> Please review that subsection to see if it effects your intent.

Proposed s. 946.78 (2) (b) ~~stats.~~ <sup>✓</sup> prohibits some of the same activity prohibited under the crime of providing material support for terrorism that is created under s. 947.08 ~~stats.~~ in LRB-4097/P1. Should the bills specify whether a person may be convicted under both sections for the same act?

Please review the definition of "financial institution" under proposed s. 946.79 (1) (a) ~~stats.~~ <sup>✓</sup> In addition to mainstream banking and securities institutions, the definition includes pawnbrokers and dealers in precious metals, stones, or jewels, both of which are included in the definition of "financial institution" under 31 USC 5312 (a) (2). Do you want to keep pawnbrokers and dealers in precious metals, stones, and jewels in the definition? Do you want to add any of the other entities listed under the federal definition, such as the United States Postal Service, or telegraph companies? The definition for "financial institution" under proposed s. 968.265 ~~stats.~~ in LRB-4097/P1 (dealing with disclosure of depositor information) does not include pawnbrokers or dealers in precious metals, stones, and jewels. Should the definitions be the same?

The bill treats violations of proposed s. 946.79 ~~stats.~~ similarly to violations of proposed s. 946.78 by: 1) providing that multiple violations of proposed s. 946.79 ~~stats.~~ may be prosecuted a single crime if the violations were pursuant to a single intent and design and 2) adding proposed s. 946.79 ~~stats.~~ to the definition of "racketeering activity" under s. 946.82 (4) <sup>✓</sup> stats. However, the bill does not provide that the penalty for attempt to commit a crime under proposed s. 946.79 ~~stats.~~ is the same as for the completed crime, even though the bill makes the penalty for attempt to commit a crime under proposed s. 946.78 ~~stats.~~ the same as the penalty for the completed crime. Should it?

Robin Ryan  
Legislative Attorney  
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**2001-2002 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-4081/P1ins  
RLR:.....

**Insert 3-9:**

(3) In a prosecution under this section, the state is required to prove that the defendant knew or had reason to know that the property involved in a transaction is direct or indirect proceeds of activity that constitutes a felony, but the state is not required to prove that the defendant knew the specific felony from which the proceeds were derived.

**Insert 3-22:**

**SECTION 1.** 946.79 of the statutes is created to read:

**946.79 False statement to financial institutions.** (1) In this section:

(a) "Financial institution" means a bank, savings bank, savings and loan association, credit union, insurance company, trust company, a securities broker or dealer, a pawnbroker, as defined ~~under~~ <sup>in</sup> s. 134.71 (1) (e), or a dealer in precious metals, stones, or jewels.

(b) "Identification document" means a document made or issued under the authority of the federal government, a state, a political subdivision of a state, a foreign government, or a political subdivision of a foreign government that is intended or commonly accepted for the purpose of identifying individuals.

(c) "Transaction" has the meaning given in s. 946.78 (1) (c).

(2) Whoever knowingly does any of the following with respect to information that is requested by or submitted to a financial institution in connection with a transaction with that financial institution is guilty of a Class E felony:

(a) Falsifies or conceals or attempts to falsify or conceal the identity of a person.

1 (b) Makes a false or fraudulent statement or representation regarding the  
2 identity of a person.

3 (c) Makes or uses a false writing knowing that the writing contains false  
4 information regarding the identity of a person.

5 (d) Uses or presents a false personal identification<sup>✓</sup> document.

6 **SECTION 2.** 946.82 (4)<sup>✓</sup> of the statutes, as affected by 2001 Wisconsin Act 16, is  
7 amended to read:

8 946.82 (4) "Racketeering activity" means any activity specified in 18 USC 1961  
9 (1) in effect as of April 27, 1982 or the attempt, conspiracy to commit, or commission  
10 of any of the felonies specified in: chs. 945 and 961 and ss. 49.49, 134.05, 139.44 (1),  
11 180.0129, 181.0129, 185.825, 201.09 (2), 215.12, 221.0625, 221.0636, 221.0637,  
12 221.1004, 551.41, 551.42, 551.43, 551.44, 553.41 (3) and (4), 553.52 (2), 940.01,  
13 940.19 (3) to (6), 940.20, 940.201, 940.203, 940.21, 940.30, 940.305, 940.31, 941.20  
14 (2) and (3), 941.26, 941.28, 941.298, 941.31, 941.32, 943.01 (2), (2d), or (2g), 943.011,  
15 943.012, 943.013, 943.02, 943.03, 943.04, 943.05, 943.06, 943.10, 943.20 (3) (c) and  
16 (d), 943.201, 943.23 (1g), (1m), (1r), (2) and (3), 943.24 (2), 943.25, 943.27, 943.28,  
17 943.30, 943.32, 943.34 (1) (c), 943.38, 943.39, 943.40, 943.41 (8) (b) and (c), 943.50 (4)  
18 (c), 943.60, 943.70, 943.76, 944.205, 944.21 (5) (c) and (e), 944.32, 944.33 (2), 944.34,  
19 945.03 (1m), 945.04 (1m), 945.05 (1), 945.08, 946.10, 946.11, 946.12, 946.13, 946.31,  
20 946.32 (1), 946.48, 946.49, 946.61, 946.64, 946.65, 946.72, 946.76, 946.78, 946.79,<sup>✓</sup>  
21 947.015, 948.05, 948.08, 948.12, and 948.30.

22 History: 2001 a. 16.

23 **Insert 4-17:**

↓

1           (2) In any case under s. 946.79<sup>✓</sup> involving more than one violation, all violations  
2     may be prosecuted as a single crime if the violations were pursuant to a single intent  
3     and design.  
4

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-4081/P1dn

RLR:jld:rs

November 12, 2001

I changed proposed s. 946.78 (3). Please review that subsection to see if it effects your intent.

Proposed s. 946.78 (2) (b) prohibits some of the same activity prohibited under the crime of providing material support for terrorism that is created under s. 947.08 in LRB-4097/P1. Should the bills specify whether a person may be convicted under both sections for the same act?

Please review the definition of "financial institution" under proposed s. 946.79 (1) (a). In addition to mainstream banking and securities institutions, the definition includes pawnbrokers and dealers in precious metals, stones, or jewels, both of which are included in the definition of "financial institution" under 31 USC 5312 (a) (2). Do you want to keep pawnbrokers and dealers in precious metals, stones, and jewels in the definition? Do you want to add any of the other entities listed under the federal definition, such as the United States Postal Service, or telegraph companies? The definition for "financial institution" under proposed s. 968.265 in LRB-4097/P1 (dealing with disclosure of depositor information) does not include pawnbrokers or dealers in precious metals, stones, and jewels. Should the definitions be the same?

The bill treats violations of proposed s. 946.79 similarly to violations of proposed s. 946.78 by: 1) providing that multiple violations of proposed s. 946.79 may be prosecuted a single crime if the violations were pursuant to a single intent and design; and 2) adding proposed s. 946.79 to the definition of "racketeering activity" under s. 946.82 (4). However, the bill does not provide that the penalty for attempt to commit a crime under proposed s. 946.79 is the same as for the completed crime, even though the bill makes the penalty for attempt to commit a crime under proposed s. 946.78 the same as the penalty for the completed crime. Should it?

Robin Ryan  
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**Emery, Lynn**

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**From:** Emery, Lynn  
**Sent:** Monday, November 12, 2001 2:31 PM  
**To:** Latorraca, Donald V.  
**Cc:** Dsida, Michael  
**Subject:** LRB-4081/P1 & P1dn (attached)

**Lynn Emery**

Lynn Emery - Program Asst. (PH. 608-266-3561)  
(E-Mail: [lynn.emery@legis.state.wi.us](mailto:lynn.emery@legis.state.wi.us)) (FAX: 608-264-6948)

Legislative Reference Bureau - Legal Section - Front Office  
100 N. Hamilton Street - 5th Floor  
Madison, WI 53703

11/12/2001

## Ryan, Robin

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From: Latorraca, Donald V.  
Sent: November 12, 2001 10:45 PM  
To: Ryan, Robin  
Cc: Richard, JoAnna M.; Korte, Roy R.  
Subject: terrorism: money laundering

Robin:

You ask several questions concerning the above drafts. Here are my comments.

✓ At the outset, I note that we did not attempt to classify the offenses with letter crimes. In light of other efforts that are afoot to classify the entire range of felonies in Wisconsin, I recommend that we classify the money laundering offense as a D felony. The penalty section (4) will need to be rewritten. It should state something to the effect that this is a Class D felony, but with some type of language that recognizes that the maximum fine may exceed the usual \$10,000 limit using the following formula: "except that the maximum fine may increase to twice the value of the proceeds or monetary instruments involved in the violation..."

"I changed proposed s. 946.78 (3). Please review that subsection to see if it effects your intent."

I believe that this language will work. What I was trying to accomplish with this section was the inclusion of some type of express statutory language that recognizes that the state is not required to prove that the defendant knew what specific felony acts were committed that resulted in the proceeds being laundered. Rather, what I think ought to be proven is that a defendant knew that the person was committing a crime, that the proceeds were the result of that crime, whether or not the person knew the exact offense (in law or fact) or whether it was a felony.

✓ "Proposed s. 946.78 (2) (b) prohibits some of the same activity prohibited under the crime of providing material support for terrorism that is created under s. 947.08 in LRB-4097/P1. Should the bills specify whether a person may be convicted under both sections for the same act?"

While there may be some overlapping applicability to these two provisions in very narrow cases, they aim at different goals. I believe that each contains elements that the other does not. As such, I do not believe it is necessary to specify.

"Please review the definition of "financial institution" under proposed s. 946.79 (1) (a). In addition to mainstream banking and securities institutions, the definition includes pawnbrokers and dealers in precious metals, stones, or jewels, both of which are included in the definition of "financial institution" under 31 USC 5312 (a) (2). Do you want to keep pawnbrokers and dealers in precious metals, stones, and jewels in the definition? Do you want to add any of the other entities listed under the federal definition, such as the United States Postal Service, or telegraph companies? The definition for "financial institution" under proposed s. 968.265 in LRB-4097/P1 (dealing with disclosure of depositor information) does not include pawnbrokers or dealers in precious metals, stones, and jewels. Should the definitions

be the same?"

I agree with your assessment. For consistency reasons, I believe that the federal definition should be applied to all sections.

✓ "The bill treats violations of proposed s. 946.79 similarly to violations of proposed s.946.78 by: 1) providing that multiple violations of proposed s. 946.79 may be prosecuted a single crime if the violations were pursuant to a single intent and design; and 2) adding proposed s. 946.79 to the definition of "racketeering activity" under s.946.82 (4). However, the bill does not provide that the penalty for attempt to commit a crime under proposed s. 946.79 is the same as for the completed crime, even though the bill makes the penalty for attempt to commit a crime under proposed s. 946.78 the same as the penalty for the completed crime. Should it?"

I agree with each of your suggestions. Thank you for your observation on the attempt language. You should modify the statute to reflect the attempt language used in s. 946.78.

Please call if you have questions.

Donald V. Latorraca  
Assistant Attorney General  
(608)-267-2797

**Ryan, Robin**

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**From:** Latorraca, Donald V.  
**Sent:** November 15, 2001 5:59 PM  
**To:** Ryan, Robin  
**Cc:** Richard, JoAnna M.; Korte, Roy R.  
**Subject:** Identity Theft / Money Laundering

I have some additional thoughts.

### **Identity Theft (False Statements to Financial Institutions)**

With respect to the provision related to "false statement to financial institutions" crime, I'm wondering if it would be valuable to make the definition of "identification document" consistent with the identity theft statute. See sec. 943.201 defines "personal identification document" as follows:

(a) "Personal identification document" means a birth certificate or a financial transaction card, as defined in s. 943.41 (1) (em).

Meanwhile, the proposed definition of "identification document" appearing in 946.79(2) provides:

(b) "Identification document" means a document made or issued under the authority of the federal government, a state, a political subdivision of a state, a foreign government, or a political subdivision of a foreign government that is intended or commonly accepted for the purpose of identifying individuals.

Do you think that it would be worthwhile to define personal identification document once and use that definition in both places? The definition that you drafted for the 946.79(2) provision would cover birth certificates. It would also include passports and other documentation. It would not cover credit cards. One definition could be developed that covers both credit cards and other more general government issued identifying documents.

I would place the new definition in the existing identity theft statute. I would then reference that definition in the proposed sec. 946.79. I would carry into sec. 946.79, the definition of "personal identifying information" appearing in sec. 943.201. I would then rewrite sec. 946.79(2)(d) to read as follows:

(d) Uses or presents a false personal identification document as defined in sec. 943.201(1)(a) or "personal identifying information" as defined in sec. 943.201(1)(b).

### **Money Laundering:**

In sec. 946.78(3), I wonder if we should write the section. The first part of that provision says that we must prove that the subject "knew or had reason to know that the property involved in a transaction is direct or indirect proceeds of activity that constitutes a felony...."

Don't we already indicate in the substantive provisions (2)(a)-(c) that we have to show "know" or "reason to know" and a nexus to a felony? In which case, wouldn't the language in the first part of (3) is superfluous and unnecessary? (I admit...I was involved in earlier drafts of this language).

What if we eliminate the first part of this section and add language as follows:

(3) In a prosecution under this section, ~~the state is required to prove that the defendant knew or had reason to~~

~~know that the property involved in a transaction is direct or indirect proceeds of activity that constitutes a felony, but the state is not required to prove that the defendant knew the specific felony from which the proceeds were derived~~ or knew that the act or acts from which the proceeds were derived constituted a felony.

The added language is intended to avoid a situation in which a defendant says..."I knew the act or acts were a crime, but I didn't know they were a felony." It should be enough that he or she knew they came from a violation of the law, not that they knew how the offense was characterized. Would that language reach it? I'll defer to your judgment in drafting.

### **Financial Institution Definition**

✓ You asked if the definition of "financial institution" appearing in 968.265 should be identical to the definition appearing in sec. 946.79(1)(a)?

Yes. Please make the definition identical. Alternatively (You could define it in one place and then refer to that definition in the other statute). Also, please add the telegraph companies to the definition of financial institutions. I hesitate to add Postal Service. Because the Postal Service is a federal entity, it probably has no legal obligation to comply with state law for purposes of the subpoena provision. In any event, even if Postal Service resources are used to engage in conduct that is a violation of sec. 946.79, I am satisfied that federal authorities would have separate jurisdiction and it would be prosecuted in federal court.

*Donald V. Latorraca*  
Assistant Attorney General  
(608)-267-2797



State of Wisconsin  
2001-2002 LEGISLATURE

LRB-4081/P1

RLR:jld:ms

P2

Today by 5

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Regen

the definition of personal  
identification document, ✓

1 AN ACT *to amend* 946.82 (4); and *to create* 939.32 (1) (f), 946.78, 946.79 and  
2 971.367 of the statutes; **relating to:** money laundering, making false  
3 statements to financial institutions, and providing penalties.

***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a later version.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*** x and (g) are

4 SECTION 1. 939.32 (1) (f) of the statutes is created to read:

5 939.32 (1) (f) Whoever attempts to commit a crime under s. 946.78 is subject

6 to the penalty provided in that section for the completed act.  
Insert 1-6/→

7 SECTION 2. 946.78 of the statutes is created to read:

8 **946.78 Money laundering.** (1) In this section:

9 (a) "Felony" means any act punishable as a felony under the laws of this state  
10 or, if the act occurred within another jurisdiction, any act punishable by  
11 incarceration for one year or more under the laws of the other jurisdiction.

1 (b) "Monetary instrument" includes any of the following:

2 1. Coin or currency of the United States or any other country.

3 2. Traveler's check, personal check, money order, or share draft or other draft  
4 for payment.

5 3. Investment security or negotiable instrument, in bearer form or other form  
6 that provides that title to the security or instrument passes upon delivery of the  
7 security or instrument.

8 4. Precious metals, stones, or jewels.

9 (c) "Transaction" means the acquisition or disposition of property by any  
10 means, including any of the following:

11 1. The purchase, sale, trade, transfer, transmission, exchange, loan, pledge,  
12 investment, delivery, deposit, or withdrawal of a monetary instrument.

13 2. The use of a safe deposit box.

14 3. The extension of credit.

15 (2) Whoever does any of the following is subject to the penalties under sub. (4):

16 (a) Receives or acquires proceeds, or engages in a transaction involving  
17 proceeds, that the person knows or has reason to know are derived from a felony, if  
18 the person also knows or has reason to know that the receipt or acquisition of the  
19 proceeds or the transaction is designed in whole or in part to conceal or disguise the  
20 nature, location, source, ownership, or control of the proceeds of the felony.

21 (b) Gives, sells, transfers, trades, invests, conceals, possesses, transports, or  
22 otherwise makes available one or more monetary instruments that the person knows  
23 or has reason to know are intended to be used to commit or further the commission  
24 of a felony.

✓ 1 (c) Directs, plans, organizes, initiates, finances, manages, supervises, or  
2 facilitates the transportation or transfer of proceeds that the person knows or has  
3 reason to know are derived from a felony, if the person also knows or has reason to  
4 know that the transportation or transfer is designed in whole or in part to conceal  
5 or disguise the nature, location, source, ownership, or control of the proceeds of the  
6 felony.

*Insert 3-6* → 7 (3) In a prosecution under this section, the state is required to prove that the  
8 defendant knew or had reason to know that the property involved in a transaction  
9 is direct or indirect proceeds of activity that constitutes a felony, but the state is not  
10 required to prove that the defendant knew the specific felony from which the  
11 proceeds were derived.

12 (4) Whoever violates sub. (2) may be fined not more than \$10,000 or twice the  
13 value of the proceeds or monetary instruments involved in the violation, whichever  
14 is greater, or imprisoned for not more than 10 years or both.

15 SECTION 3. 946.79 of the statutes is created to read:

16 **946.79 False statement to financial institutions.** (1) In this section:

17 (a) "Financial institution" means a bank, savings bank, savings and loan  
18 association, credit union, insurance company, trust company, a securities broker or  
19 dealer, a pawnbroker, as defined in s. 134.71 (1) (e), or a dealer in precious metals,  
20 stones, or jewels.

21 (b) "Identification document" means a document made or issued under the  
22 authority of the federal government, a state, a political subdivision of a state, a  
23 foreign government, or a political subdivision of a foreign government that is  
24 intended or commonly accepted for the purpose of identifying individuals.

✓ *Insert 3-24* → 25 (d) "Transaction" has the meaning given in s. 946.78 (1) (c). ✓

(2) Whoever knowingly does any of the following with respect to information that is requested by or submitted to a financial institution in connection with a transaction with that financial institution is guilty of a Class E felony:

(a) Falsifies or conceals or attempts to falsify or conceal the identity of a person.

(b) Makes a false or fraudulent statement or representation regarding the identity of a person.

(c) Makes or uses a false writing knowing that the writing contains false information regarding the identity of a person.

(d) Uses or presents a false personal identification document. *or false personal identifying information*

SECTION 4. 946.82 (4) of the statutes, as affected by 2001 Wisconsin Act 16, is amended to read:

946.82 (4) "Racketeering activity" means any activity specified in 18 USC 1961 (1) in effect as of April 27, 1982 or the attempt, conspiracy to commit, or commission of any of the felonies specified in: chs. 945 and 961 and ss. 49.49, 134.05, 139.44 (1), 180.0129, 181.0129, 185.825, 201.09 (2), 215.12, 221.0625, 221.0636, 221.0637, 221.1004, 551.41, 551.42, 551.43, 551.44, 553.41 (3) and (4), 553.52 (2), 940.01, 940.19 (3) to (6), 940.20, 940.201, 940.203, 940.21, 940.30, 940.305, 940.31, 941.20 (2) and (3), 941.26, 941.28, 941.298, 941.31, 941.32, 943.01 (2), (2d), or (2g), 943.011, 943.012, 943.013, 943.02, 943.03, 943.04, 943.05, 943.06, 943.10, 943.20 (3) (c) and (d), 943.201, 943.23 (1g), (1m), (1r), (2) and (3), 943.24 (2), 943.25, 943.27, 943.28, 943.30, 943.32, 943.34 (1) (c), 943.38, 943.39, 943.40, 943.41 (8) (b) and (c), 943.50 (4) (c), 943.60, 943.70, 943.76, 944.205, 944.21 (5) (c) and (e), 944.32, 944.33 (2), 944.34, 945.03 (1m), 945.04 (1m), 945.05 (1), 945.08, 946.10, 946.11, 946.12, 946.13, 946.31, 946.32 (1), 946.48, 946.49, 946.61, 946.64, 946.65, 946.72, 946.76, 946.78, 946.79, 947.015, 948.05, 948.08, 948.12, and 948.30.

1           SECTION 5. 971.367<sup>X</sup> of the statutes is created to read:

2           **971.367 Crimes involving money laundering and false statements to**  
3 **financial institutions.** (1) In any case under s. 946.78<sup>✓</sup> involving more than one  
4 violation, all violations may be prosecuted as a single crime if the violations were  
5 pursuant to a single intent and design.

6           (2) In any case under s. 946.79<sup>✓</sup> involving more than one violation, all violations  
7 may be prosecuted as a single crime if the violations were pursuant to a single intent  
8 and design.

9                           (END)

2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-4081/2ins  
RLR:.....

**Insert 1-6:**

(g) Whoever attempts to commit a crime under s. 946.79<sup>✓</sup> is subject to the penalty provided in that section for the completed act.

**SECTION 1.** 943.201 (1) (a)<sup>✓</sup> of the statutes is amended to read:

943.201 (1) (a) "Personal identification document" means a ~~birth certificate~~<sup>✓</sup> document made or issued under the authority of the federal government, a state, a political subdivision of a state, a foreign government, or a political subdivision of a foreign government that is intended or commonly accepted for the purpose of identifying individuals, or a financial transaction card, as defined in s. 943.41 (1) (em).

History: 1997 a. 101.

**Insert 3-6:**

(3) (a) In a prosecution under sub. (2) (a) or (c),<sup>✓</sup> the state is not required to prove that the defendant knew the specific felony from which the ~~proceeds~~<sup>✓</sup> were derived, or that the defendant knew that the act from which the proceeds were derived constituted a felony.

(b) In a prosecution under sub. (2) (b),<sup>✓</sup> the state is not required to prove that the defendant knew the specific felony for which the monetary instrument<sup>✓</sup> was intended to be used, or that the defendant knew that the act for which the monetary instrument was intended to be used constituted a felony.

(22) (4) Whoever violates sub. (2) ~~may~~<sup>2</sup> is guilty of a Class D felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (d), the person may be

↓

1 fined not more than \$10,000<sup>✓</sup> or twice the value of the proceeds or monetary  
2 instruments involved in the violation, whichever is greater.

3  
4 **Insert 3-24:**

5 (b) "Personal identification document" has the meaning given in s. 943.201 (1)<sup>✓</sup>

6 (a).

7 (c) "Personal identifying information"<sup>✓</sup> has the meaning given in s. 943.201 (1)

8 (b).<sup>✓</sup>

9

4077

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4079

4301

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4081

4067

## Sorted Item List

<u>Store File Name</u>	<u>Text</u>
-4079.1	48.685 (5) (bm) 4. of the statutes is amended to read:
-4078.1	59.54 (6) of the statutes is amended to read:
-4079.2	115.31 (2g) of the statutes is amended to read:
-4079.3	118.19 (4) (a) of the statutes is amended to read:
-4097.1	165.25 (2m) of the statutes is created to read:
-4079.4	165.55 (3) of the statutes is amended to read:
-4078.2	165.70 (1) (b) of the statutes is amended to read:
-4077.1	301.048 (2) (bm) 1. a. of the statutes is amended to read:
-4078.3	301.048 (2) (bm) 1. a. of the statutes is amended to read:
-4079.5	301.048 (2) (bm) 1. a. of the statutes is amended to read:
-4097.2	301.048 (2) (bm) 1. a. of the statutes is amended to read:
-4097.3	343.237 (3) (d) of the statutes is repealed.
-4097.4	440.475 (1) of the statutes is renumbered 440.475 (1) (intro.) and amended to read:
-4097.5	440.475 (1) (b) of the statutes is created to read:
-4097.6	440.475 (1) (c) of the statutes is created to read:
-4097.7	786.36 (4) of the statutes is amended to read:
-4301.1	895.01 (1) (g) of the statutes is amended to read:
-4078.4	895.035 (4a) (a) 2. of the statutes is amended to read:
-4097.8	895.035 (4a) (a) 2. of the statutes is amended to read:
-4079.6	938.396 (2) (j) of the statutes is amended to read:
-4097.9	938.78 (3) of the statutes is amended to read:
-4077.2	939.22 (21) (k) of the statutes is amended to read:
-4077.3	939.22 (21) (L) of the statutes is amended to read:
-4077.4	939.22 (21) (Lo) of the statutes is created to read:
-4077.5	939.31 of the statutes is amended to read:
-4077.6	939.32 (1) (c) of the statutes is amended to read:
-4081.1	939.32 (1) (f) and (g) of the statutes are created to read:
-4097.10	939.32 (1) (h) of the statutes is created to read:
-4077.7	939.632 (1) (e) 1. of the statutes is amended to read:

-4077.8	939.632 (1) (e) 3. of the statutes is amended to read:
-4097.11	939.648 (2) (intro.), (a) and (b) (intro.) of the statutes are amended to read:
-4097.12	939.648 (2) (c) of the statutes is renumbered 939.648 (2) (c) (intro.) and amended to read:
-4097.13	939.648 (2) (c) 3. of the statutes is created to read:
-4097.14	939.648 (3) and (4) of the statutes are amended to read:
-4079.7	940.20 (2) of the statutes is amended to read:
-4079.8	940.20 (2m) (title) of the statutes is amended to read:
-4079.9	940.20 (2m) (a) (intro.) and 1. of the statutes are consolidated, renumbered 940.20 (2m) (a), and amended to read:
-4079.10	940.20 (2m) (a) 2. of the statutes is repealed.
-4079.11	940.20 (2m) (b) of the statutes is amended to read:
-4079.12	940.20 (4) of the statutes is repealed.
-4079.13	940.20 (5) of the statutes is repealed.
-4079.14	940.20 (6) (b) (intro.) of the statutes is amended to read:
-4077.9	940.201 (1) (b) of the statutes is amended to read:
-4079.15	940.203 of the statutes is repealed.
-4079.16	940.204 of the statutes is created to read:
-4079.17	940.205 of the statutes is repealed.
-4079.18	940.207 of the statutes is repealed.
-4077.10	940.41 of the statutes is renumbered 946.605, and 946.605 (intro.), as renumbered, is amended to read:
-4077.11	940.42 of the statutes is renumbered 946.62 and amended to read:
-4077.12	940.43 of the statutes is renumbered 946.625, and 946.625 (intro.), (1), (2), (5) and (6), as renumbered, are amended to read:
-4077.13	940.44 of the statutes is renumbered 946.63, and 946.63
-4077.14	940.45 of the statutes is renumbered 946.635, and 946.635 (intro.), (1), (2), (5) and (6), as renumbered, are amended to read:
-4077.15	940.46 of the statutes is renumbered 946.642 and amended to read:
-4077.16	940.47 of the statutes is renumbered 946.644 and amended to read:
-4077.17	940.48 of the statutes is renumbered 946.646, and 946.646 (intro.), (1) and (2), as renumbered, are amended to read:
-4077.18	940.49 of the statutes is renumbered 946.648 and amended to read:
-4097.15	941.26 (1) (a) of the statutes is amended to read:
-4097.16	941.26 (2) (a) of the statutes is amended to read:

-4097.17	941.26 (3) of the statutes is amended to read:
-4097.18	941.27 (2) of the statutes is amended to read:
-4097.19	941.31 of the statutes is repealed.
-4097.20	941.375 of the statutes is created to read:
-4077.19	941.38 (1) (b) 11. of the statutes is amended to read:
-4077.20	941.38 (1) (b) 12. of the statutes is amended to read:
-4077.21	941.38 (1) (b) 12o. of the statutes is created to read:
-4077.22	943.011 (1) (b) of the statutes is amended to read:
-4079.19	943.013 of the statutes is repealed.
-4079.20	943.0135 of the statutes is created to read:
-4079.21	943.015 of the statutes is repealed.
-4077.23	943.017 (2m) (a) 2. of the statutes is amended to read:
-4079.22	943.05 of the statutes is amended to read:
-4097.21	943.20 (3) (e) of the statutes is created to read:
-4081.2	943.201 (1) (a) of the statutes is amended to read:
-4077.24	946.605 (1c) of the statutes is created to read:
-4077.25	946.605 (1e) of the statutes is created to read:
-4077.26	946.64 of the statutes is renumbered 946.64 (1) and amended to read:
-4077.27	946.64 (2) of the statutes is created to read:
-4077.28	946.64 (3) of the statutes is created to read:
-4081.3	946.78 of the statutes is created to read:
-4081.4	946.79 of the statutes is created to read:
-4078.5	946.82 (4) of the statutes, as affected by 2001 Wisconsin Act 16, is amended to read:
-4079.23	946.82 (4) of the statutes, as affected by 2001 Wisconsin Act 16, is amended to read:
-4081.5	946.82 (4) of the statutes, as affected by 2001 Wisconsin Act 16, is amended to read:
-4097.22	946.82 (4) of the statutes, as affected by 2001 Wisconsin Act 16, is amended to read:
-4078.6	947.012 (1) (a) of the statutes is repealed.
-4078.7	947.0125 (2) (a) of the statutes is repealed.
-4078.8	947.0125 (2) (b) of the statutes is repealed.
-4097.23	947.015 of the statutes is repealed.
-4078.9	947.02 of the statutes is renumbered 947.12.

-4078.10	947.03 of the statutes is created to read:
-4078.11	947.04 of the statutes is renumbered 947.14.
-4078.12	947.05 of the statutes is created to read:
-4078.13	947.06 of the statutes is renumbered 947.16.
-4097.24	947.07 of the statutes is created to read:
-4097.25	947.08 of the statutes is created to read:
-4097.26	968.26 of the statutes is renumbered 968.26 (1) and amended to read:
-4097.27	968.26 (2) of the statutes is created to read:
-4097.28	968.265 of the statutes is created to read:
-4097.29	968.27 (intro.) of the statutes is amended to read:
-4301.2	968.27 (14m) of the statutes is created to read:
-4097.30	968.275 of the statutes is created to read:
-4301.3	968.28 of the statutes is amended to read:
-4301.4	968.30 (1) (intro.) of the statutes is amended to read:
-4301.5	968.30 (4) (intro.) of the statutes is amended to read:
-4301.6	968.30 (5) of the statutes is renumbered 968.30 (5) (a) and amended to read:
-4301.7	968.30 (6m) of the statutes is created to read:
-4301.8	968.30 (7) (d) (intro.) of the statutes is amended to read:
-4301.9	968.30 (11) of the statutes is created to read:
-4301.10	968.31 (2) (am) of the statutes is created to read:
-4301.11	968.31 (2g) of the statutes is created to read:
-4301.12	968.31 (2m) (intro.) of the statutes is repealed and recreated to read:
-4301.13	968.31 (3) of the statutes is amended to read:
-4097.31	968.40 (1) of the statutes is renumbered 968.40 (1) (b).
-4097.32	968.40 (1) (a) of the statutes is created to read:
-4077.29	969.02 (4m) of the statutes is amended to read:
-4077.30	969.03 (2m) of the statutes is amended to read:
-4078.14	969.08 (10) (b) of the statutes is amended to read:
-4079.24	969.08 (10) (b) of the statutes is amended to read:
-4097.33	969.08 (10) (b) of the statutes is amended to read:
-4081.6	971.367 of the statutes is created to read:
-4077.31	971.37 (1m) (a) 2. of the statutes is amended to read:
-4077.32	973.055 (1) (a) 1. of the statutes is amended to read:

-4097.34

Initial applicability.

FROM THE

LEGISLATIVE REFERENCE BUREAU

⑪ Sub Criminal  
 Head: ~~Investigative~~ ~~and~~ ~~proceedure~~ and investigations ✓

✓ 7 ✓ Money laundering \*

✓ 8 ✓ False statements to financial institutions

✓ 4 Battery and threats against a public officer or employee; battery against a public transit vehicle passenger ✓

✓ 11A Electronic surveillance

✓ 5A Threats to cause death, bodily harm, or property damage ✓

✓ 3 ~~or~~ Terrorist threats ~~or~~ insert Bomb scare stuff ✓

✓ ② Terrorism penalty enhancer ✓

✓ 6 ~~or~~ Material support for terrorism ✓

✓ 15 Procedure for making a legal name change ✓

✓ 14 Law enforcement access to driver's license and identification card photographs. ✓

✓ 10 ~~or~~ Interfering with disarmament of explosives ✓

✓ 9 ~~or~~ Crimes related to firearms ✓

✓ 12 Grand jury and John Doe proceedings ✓

✓ 13 Orders for disclosure of depositor or subscriber information ✓

✓ 18 Prohibitions related to explosives, destructive devices, detonators, and weapons of mass destruction. ✓

✓ 16 Penalties for crimes created by this bill

✓ 17 FE - str/local

✓ ⑪ Text stuff at beginning of analysis ~~or~~ ✓

✓ ~~or~~ sub Head: Terrorism and other ~~or~~ crimes ✓

⑤ Unlawful communications with jurors ✓

This is in the bill itself, not in the analysis, ~~and it is in the bill~~

**2001-2002 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-4097/analins  
RLR:.....

*Analysis (N Sent)*

This bill makes a number of changes in the criminal code to create new criminal offenses and to revise or repeal existing prohibitions, mostly relating to terrorism and certain types of threats. It also makes a number of changes in the law relating to criminal procedure and investigations. The rest of this analysis describes relevant provision of current law in general terms and describes the changes made by this bill.

***Money laundering***

Current law provides various penalties for theft and related property crimes. This bill prohibits various types of money laundering and provides penalties for violations. Examples of the money laundering that the bill prohibits include: 1) acquiring proceeds that a person knows or has reason to know are derived from felonious activity, if the person knows or has reason to know the acquisition is designed to conceal the nature, location, source, ownership or control of the proceeds; 2) transferring or possessing currency or other monetary instruments that a person knows or has reason to know are intended to be used to commit a felony; and 3) planning the transfer of proceeds that a person knows or has reason to know are derived from felonious activity, if the person knows or has reason to know that the transfer is designed to conceal the nature, location, source, ownership or control of the proceeds. The bill makes money laundering a Class D felony, except that a person convicted of money laundering may be fined not more than \$10,000 or twice the value of the proceeds or monetary instruments involved in the crime, whichever is greater.

***False statements to financial institutions***

Current law prohibits various fraud related to financial transaction cards, including making false statements for the purpose of obtaining a financial transaction card and forging a financial transaction card. Current law also prohibits the use of another's personal identifying information or a personal identification document belonging to another without that person's consent to obtain credit, money, goods, services, or anything else of value.

The bill prohibits making various false statements in connection with a transaction with a financial institution. The prohibited activities include: 1) falsifying or concealing the identity of a person; 2) making a false statement or representation regarding a person; 3) making or using a writing that contains false information regarding the identity of a person; or 4) using or presenting a false personal identification document or false personal identifying information. The crimes related to false statements to financial institutions are Class E felonies.

***Battery and threats against a public officer or employee; battery against a public transit vehicle passenger***

Under current law, no person may intentionally cause bodily harm to another person without the other person's consent. A person who violates this prohibition is guilty of a Class A misdemeanor. More severe penalties apply if the victim suffers substantial bodily harm or great bodily harm. For example, if a person causes substantial bodily harm to another with intent to cause substantial bodily harm, the person is guilty of a Class D felony. Current law also provides more severe penalties

for battery committed under certain circumstances against any of the following: 1) an elected or appointed state or local public officer; 2) an officer or employee of a school district or technical college district; 3) an officer or employee of a prison or detention facility; 4) a probation, extended supervision, or parole agent or a person authorized to supervise a juvenile on aftercare; 5) a law enforcement officer or fire fighter; 6) a person working in a hospital emergency room, an emergency medical technician, a first responder (a person employed or assigned to provide emergency medical care to another before the arrival of an ambulance), or an ambulance driver; or 7) an operator of a bus, train, boat, airplane, or other vehicle providing transportation service to the general public (a public transit vehicle). In all of these "special circumstances" battery cases, other than those in which the victim is a public officer, the prosecutor must prove that the actor knew that the victim was one of the individuals described above or that the victim was acting in his or her official capacity at the time of the battery or both. In cases involving a public officer, the prosecutor must show that the battery was committed in order to influence the action of the public officer or as a result of any action taken within an official capacity. A person who commits special circumstances battery is guilty of a Class D felony, unless the victim was a public officer, an officer or employee of a school district or technical college district, or the operator of a public transit vehicle.

Current law also provides a more severe penalty for battery committed against passengers or potential passengers of a public transit vehicle. A person committing battery is guilty of a Class D felony if the bodily harm is inflicted: 1) while the victim was a passenger of a public transit vehicle; 2) after the offender forces or directs the victim to leave a public transit vehicle; or 3) as the offender prevents, or attempts to prevent, the victim from gaining lawful access to a public transit vehicle.

Through separate statutory provisions, current law also prohibits intentionally causing bodily harm or threatening to cause bodily harm to a judge or an official, employee, or agent of the department of revenue, commerce, or workforce development (a covered government employee) or a family member of a covered government employee. This prohibition applies if: 1) the actor knows or should have known that the victim is a covered government employee or a member of his or her family; 2) the covered government employee is acting in an official capacity at the time of the act or threat or the act or threat is in response to any action taken in an official capacity; and 3) there is no consent by the person harmed or threatened. A person violating one of these prohibitions is guilty of a Class D felony.

This bill repeals the special circumstances battery provisions that apply exclusively to state or local government employees and the battery/threats prohibitions applicable to covered government employees and establishes a new offense applicable to all state or local public officers or employees. Under this bill, no person may intentionally cause bodily harm or threaten to cause bodily harm to any state or local public officer or employee if all of the following apply: 1) the actor knows or should have known that the victim is a state or local public officer or employee or a member of his or her family; 2) the state or local public officer or employee is acting in an official capacity at the time of the act or threat, the act or threat, the act or threat is intended to influence an action by the public officer or

employee in an official capacity, or the act or threat is in response to any action taken in an official capacity; and 3) there is no consent by the person harmed or threatened. A person violating this prohibition is guilty of a Class D felony. The bill also makes battery against an operator, passenger, or potential passenger of a public transit vehicle into a Class D felony.

### ***Electronic surveillance***

Current law generally prohibits the interception of many types of communications, including telephone calls, electronic mail, and face-to-face conversations. Current law, however, authorizes law enforcement officers and prosecutors to engage in electronic surveillance — and intercept communications — under certain circumstances if the interception may provide or has provided evidence of the commission of the offense of homicide, felony murder, kidnapping, commercial gambling, bribery, extortion, dealing in controlled substances, the commission of certain computer crimes, or the conspiracy to commit any of those offenses. In order for a law enforcement officer or a prosecutor to engage in electronic surveillance, the attorney general and the district attorney must jointly apply in writing and under oath to the chief judge for the judicial administrative district in which the electronic surveillance is to occur for an order authorizing the interception. The court may grant the order if it determines, based on the information presented, that: 1) there is probable cause to believe that an individual is committing, has committed, or is about to commit one of the offenses listed above; 2) there is probable cause to believe that particular communications concerning that offense will be obtained through the interception; 3) other investigative procedures have been tried and have failed, are unlikely to succeed if tried, or are too dangerous to try; and 4) there is probable cause to believe that the facilities from which or the place where the interception is to occur are or will be used in the commission of the offense or are leased to, listed in the name of, or commonly used by the person committing or about to commit the offense.

The court's order may authorize electronic surveillance for no longer than 30 days, although it may be extended for up to an additional 30 days. The order must specify, among other things, the nature and location of the communications facilities being used or the place being used for the communications that will be intercepted.

This bill makes several changes to these provisions. First, under the bill, a court may authorize electronic surveillance if it may provide or has provided evidence of the commission any felony that is dangerous to life, limb, or property, not just one of the crimes listed in the second sentence of this section of the analysis.

Second, the bill permits a law enforcement officer or a prosecutor to obtain an order permitting electronic surveillance in an emergency situation (a situation involving immediate danger of death or great bodily harm) based on an application made under oath by telephone, radio, or other means of electronic communication. The application needs to be approved in advance by either the attorney general or the district attorney (as opposed to both of them — which is required for applications in non-emergency cases). In order to grant the order, the court must make the determinations that are required in other case. Additionally, it must determine, based on information presented by the applicant, that adhering to the procedure for

obtaining an order in non-emergency cases may increase or prolong the risk of death or great bodily harm that the emergency situation involves.

An order authorizing an emergency wiretap expires, at the latest, 48 hours after its issuance. Before that time period expires, the applicant must apply to the chief judge in writing — in the same manner as if he or she were applying in a non-emergency situation — for approval of the electronic surveillance. The court must grant or deny the application (applying the law governing non-emergency situations) within 48 hours after entering the emergency wiretap order. If the court grants the application, the electronic surveillance may continue under the same terms as any non-emergency order. If the court denies the application or if the applicant for the emergency wiretap order never files a subsequent written application, the emergency wiretap order expires immediately, and evidence from any communication intercepted under the emergency wiretap order may be excluded from evidence in court.

Third, the bill authorizes law enforcement officers and prosecutors to obtain "roving interception orders." A roving interception order permits the interception of communications of a specified individual without specifying the nature and location of the communications facilities or the place being used for the communications that will be intercepted. To obtain such an order, a law enforcement officer or prosecutor must demonstrate to the court, in the context of his or her application for authorization to engage in electronic surveillance, either: 1) that it is not practical to identify the facilities or the place being used for the communications that will be intercepted; or 2) that there is probable cause to believe that the person committing or about to commit the relevant offense could thwart interception from a specified facility or place. An order that is based on the second option is valid only while the person in is or was reasonably close to the instrument through which the communications will be or was transmitted.

Fourth, the bill authorizes a person to provide information, facilities, or technical assistance to another person who is legally engaged in electronic surveillance if one of the following applies: 1) the judge authorizing the interception has ordered the person to provide the specified assistance and the person has been provided with a copy of the court's order; or 2) the attorney general, the district attorney, or a person authorized to intercept communications under an emergency wiretap order provides the person a written certification that states that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required. The order or certification must specify the information, facilities, or technical assistance required and must set forth the period of time during which the provision of the specified assistance is authorized. The bill also generally prohibits the person from disclosing information regarding the electronic surveillance.

### ***Threats to cause death, bodily harm, or property damage***

Under current law, no person may make a telephone call and threaten to cause bodily harm to another person or to damage any person's property if the call and the threat are made with intent to frighten, intimidate, threaten, abuse, or harass the other person. In addition, no person, with intent to frighten, intimidate, threaten,

abuse, or harass another person, may: 1) send the person electronic mail (e-mail) or any other computerized message threatening to cause bodily harm to any person or to damage any person's property; or 2) send any e-mail or any other computerized message, with the reasonable expectation that the person will receive it, threatening to cause bodily harm to any person or to damage any person's property. A person who violates one of these prohibitions is guilty of a Class B misdemeanor. (A person convicted of a Class B misdemeanor may be fined not more than \$1,000 or imprisoned for not more than 90 days or both.)

Under this bill, no person may threaten to cause the death of or bodily harm to another person or to damage another person's property with intent to frighten, intimidate, threaten, abuse, or harass any person. A person who violates this prohibition is guilty of a Class A misdemeanor.

### ***Terrorist threats***

Under this bill, no person may threaten to cause the death of or bodily injury to any person or to damage any person's property under any of the following circumstances: 1) the actor intends to prevent the occupation of or cause the evacuation of a building, dwelling, school premises, vehicle (including any train, boat, or airplane), facility of public transportation, or place of public assembly or any room within a building, dwelling, or school premises; 2) the actor intends to cause serious public inconvenience; 3) the actor intends to cause an interruption or impairment of governmental operations or public communication, of transportation, or of a supply of water, gas, or other public service; or 4) the actor creates an unreasonable and substantial risk of causing one of the occurrences described in items 1 to 3 in this paragraph and is aware of that risk. A person who violates this prohibition is guilty of a Class E felony, unless the person thereby contributes to the death of any person. In that case, the person is guilty of a Class C felony.

### ***Terrorism penalty enhancer***

Current law authorizes increased penalties for certain felonies (crimes punishable by incarceration in prison) that are committed with intent to terrorize. The penalty enhancer is applicable to felonies committed under one of the following circumstances: 1) the felony results in bodily harm or death to another; 2) the felony results in damage of \$25,000 or more to the property of another; or 3) the felony involves the use of force or violence or the threat of force or violence. A person has intent to terrorize if he or she has intent to influence the policy of a governmental unit or to punish a governmental unit for a prior policy decision. If a person is convicted of a felony and the terrorism enhancer is found to apply, the maximum fine for the underlying felony may be increased by up to \$50,000, and the maximum term of imprisonment for the underlying felony may be increased by up to ten years.

The bill expands intent to terrorize to include intent to do any of the following: influence the conduct of a governmental unit; influence an official policy decision or the official conduct of a public officer or public employee; punish a public officer or public employee for a prior policy decision, other official decision, or official conduct; or intimidate or coerce a civilian population. The bill also makes criminal damage to property, which is a misdemeanor (a crime punishable by incarceration in jail), a

crime to which the terrorism penalty enhancer may apply if it is committed with intent to terrorize.

***Material support for terrorism***

Under current law, a person is a party to a crime and may be convicted of committing the crime if the person directly commits the crime, intentionally aids and abets the commission of the crime, is a party to a conspiracy to commit the crime, or hires, counsels, or otherwise procures another to commit the crime. A person may be convicted of solicitation, if the person with intent that a felony be committed, advises another to commit that felony. The penalty for solicitation is generally less than the penalty for commission of the crime. A person may also be convicted of conspiracy if the person, with intent that a crime be committed, agrees or combines with another to commit the crime, as long as one of the parties to the conspiracy commits an act to effect the object of the conspiracy. The penalty for conspiracy is generally the same as the penalty for the completed crime, except that a person may not be imprisoned for life upon conviction of conspiracy.

The bill prohibits a person from soliciting or collecting material support if he or she knows or has reason to know that the material support is intended to be used to plan, prepare, commit, or escape after committing an act of international terrorism. The bill also prohibits a person from providing material support to another if he or she knows or has reason to know that the material support is intended to be used to plan, prepare, commit, or escape after committing an act of terrorism. An act of terrorism is a crime to which the terrorism penalty enhancer (described above) applies, or an act committed outside this state that would be a crime to which the terrorism penalty enhancer would apply if committed in this state. The crimes against soliciting or collecting material support for acts of terrorism are Class C felonies.

Current law requires a charitable organization to be registered with the department of regulation and licensing (DORL) in order to be able to solicit contributions in this state. Current law also requires professional fund-raisers (persons paid to solicit charitable contributions) and fund-raising counsel (persons paid to plan, manage, or give advice concerning the solicitation of charitable contributions) to be registered with DORL. DORL may deny, limit, suspend, or revoke the registration of a charitable organization, professional fund-raiser, or fund-raising counsel that does any of the following: 1) makes a false statement in a registration statement, annual report, or other information required to be filed with DORL; or 2) violates a statute or rule that regulates the solicitation of charitable contributions. This bill provides that DORL may deny, limit, suspend, or revoke the registration of a charitable organization, professional fund-raiser, or fund-raising counsel that violates the prohibitions created in the bill against soliciting or collecting material support that is intended to be used to plan, prepare, commit, or escape after committing acts of terrorism.

***Procedure for making a legal name change***

Current law provides that a person may petition a circuit court to enter an order changing the person's name. A person may also change his or her name by marriage or divorce. The Wisconsin Supreme Court has also accepted that a person may

change his or her name under common law by consistent and continuous use of a new name, as long as the name change is not effected for a fraudulent purpose. (See *State v. Hansford*, 219 Wis. 2d 226 (1998)). The bill specifies that petitioning a circuit court a name change or changing one's name in connection with marriage or divorce are the only legitimate methods for making a name change.

***Law enforcement access to driver's license and identification card photographs.***

Under current law, the department of transportation (DOT) generally may not release photographs taken for a driver's license or an identification card, except to the person photographed. However, DOT may release a photograph to a law enforcement agency for the purpose of investigating unlawful activity, investigating a missing persons case, or identifying an accident victim or a deceased person. DOT may not release a photograph to a law enforcement agency solely for use as part of a photograph lineup or photograph array. The bill eliminates the restriction on releasing photographs solely for use as part of a photograph lineup or a photograph array.

***Interfering with disarmament of explosives***

Under current law the following acts are crimes; interfering with fire fighting, obstructing a law enforcement officer; or obstructing emergency or rescue personnel. The bill makes it a Class E felony to interfere with or obstruct a public safety official while that official is searching for, disarming, or destroying an explosive or a destructive device.

***Crimes related to firearms***

Under current law theft of property that does not exceed \$2,500 in value is a Class A misdemeanor. Theft of property that exceeds \$2,500 in value, or theft of a firearm is a Class D felony. The bill makes theft of a firearm that is owned by a law enforcement agency, the U.S. armed forces, a reserve component of the U.S. armed forces, or the National Guard, or theft of a machine gun, an explosive, or a destructive device, regardless of who owns the machine gun, explosive, or destructive device, a Class C felony.

Under current law it is a Class E felony to sell, possess, use, or transport a machine gun or other fully automatic weapon. The bill makes this crime a Class D felony and specifically prohibits transferring a machine gun or fully automatic weapon, even if the transfer does not constitute a sale. The bill also clarifies the exceptions under which the prohibitions regarding machine guns do not apply.

***Grand jury and John Doe proceedings***

Under current law, a grand jury proceeding is a formal criminal investigative proceeding in which jurors may hear evidence of possible crimes, call and examine witnesses, and, if appropriate, issue subpoenas charging persons with specific crimes.

A John Doe proceeding is a procedure available to determine if a crime has probably been committed and, if so, who probably committed that crime. A judge conducts the John Doe proceeding at which he or she examines the complainant and other witnesses. The judge sets the scope of the proceeding and he or she may

conduct the proceeding secretly. If the judge determines that there is probable cause to believe that a crime was committed and that a specific person committed that crime, a criminal complaint may be prepared. If there is a criminal complaint, an arrest warrant must be issued.

The bill provides a procedure for conducting a grand jury proceeding with statewide jurisdiction. Under the bill, the attorney general may petition the chief judge of any judicial administrative district in which there is reason to believe that there is criminal activity that is statewide in nature, importance or influence or that relates to dangerous drugs, gambling or other specified offenses to convene a grand jury having statewide jurisdiction. The chief judge may preside over any such grand jury or assign it to another judge in the district.

The bill allows the attorney general to petition for a John Doe proceeding that has statewide investigative jurisdiction. The attorney general may petition any chief judge of a judicial administrative district in which there is reason to believe that there is criminal activity that is statewide in nature, importance or influence or that relates to dangerous drugs, gambling or other specified offenses. If the chief judge orders this type of John Doe proceeding, he or she may conduct it or assign another judge to do so. The attorney general represents the state at any such proceeding.

***Orders for disclosure of depositor or subscriber information***

Under current law, the attorney general or a district attorney may obtain a court order for disclosure of documents that constitute evidence of a crime if the attorney general or district attorney shows that there is probable cause for the order and that there is probable cause to believe that the documents are under the control of a person who is reasonably suspected to be concerned in the commission of the crime.

The bill allows the attorney general or a district attorney to obtain a court order for the disclosure of certain information upon a showing that the information is relevant to a criminal investigation. The information covered by this provision includes information as to whether a specific person has, or at a specific time in the past had, a depository account with a financial institution. The provision also covers the following information held by an electronic communications service provider pertaining to a subscriber: name, address, telephone connection records, start date and length of service, types of services provided, telephone numbers, network address or other subscriber identity, and means of payment for services.

***Prohibitions related to explosives, destructive devices, detonators, and weapons of mass destruction.***

Under current law, it is a Class C felony to make, buy, transport, possess, or transfer explosives with intent to use the explosives to commit a crime or knowing that another intends to use the explosives to commit a crime. (See below, ***Penalties for crimes created by this bill***, for a listing of the maximum fines, terms of confinement, and sentence length for offenses described in this analysis.) It is a Class E felony to make, buy, sell, transport, possess, use, or transfer an improvised explosive device, regardless of whether any person has intent to use the improvised explosive device to commit a crime. An improvised explosive device is defined as a device that contains explosive material and a means of detonating the explosive

material, and which is capable of causing bodily harm, great bodily harm, death, or property damage.

Current law also prohibits a person from intentionally conveying or causing to be conveyed any false information, knowing such information to be false, concerning an attempt to destroy property by means of an explosive. This crime of making a bomb scare is a Class E felony.

The bill expands the prohibitions concerning explosives and threats. The bill defines a "destructive device" as a device that contains an explosive or an incendiary and is designed or configured to cause substantial bodily harm, death, or property damage, including a bomb, grenade, rocket, missile or mine. "Destructive device" also includes an overpressure device, which is defined as a container filled with an explosive gas or an expanding gas or liquid that is designed or constructed to break, fracture, or rupture in a manner capable of causing substantial bodily harm, death, or property damage. A "weapon of mass destruction" is defined as a poisonous gas, a toxic chemical, a precursor of a poisonous gas or toxic chemical, or a biological agent; a device that is designed or intended to release any such substance; or a device that is designed or intended to release radiation or radioactivity at a level that is dangerous to human life.

The bill makes it a Class C felony to manufacture, buy, sell, offer to sell, transfer, distribute, or possess an explosive, destructive device, or a weapon of mass destruction, regardless of the actor's intent. If the crime concerns an explosive or a destructive device it is a Class C felony, and if it concerns a weapon of mass destruction, it is a Class A felony. It is also a Class C felony to engage in any of these activities with respect to a detonator with intent to commit a crime. The bill also makes it a Class C felony to manufacture, buy, sell, offer to sell, transfer, distribute, or possess a component of a destructive device or a component of a weapon of mass destruction with intent that the component be used to construct or assemble a destructive device or weapon of mass destruction, whichever is applicable.

The bill makes it a Class B felony to use or attempt to use an explosive or a weapon of mass destruction, and a Class A felony to use or attempt to use a weapon of mass destruction. The bill also makes it a Class B felony to use a detonator with intent to commit a crime.

Under the bill, a person who manufactures, possesses, transfers, transports, delivers, distributes, displays, or deploys a facsimile of a destructive device or a weapon of mass destruction with intent to alarm, intimidate, threaten, terrify, or harass another is guilty of a Class D felony.

The bill expands the bomb scare crime to prohibit making or conveying a threat, knowing it to be false, to use or attempt to use an explosive, a destructive device, or a weapon of mass destruction. The threat crime is a Class E felony. However, if a person makes or conveys the threat with intent to cause the evacuation of or prevent the occupation of a public place, or with reckless disregard of such a result, the person is guilty of a Class D felony. Further, if a person makes or conveys a threat with intent to cause an interruption or impairment of governmental operations or public communication, of transportation, or a supply of water, gas, or other public service, or with reckless disregard of such a result, the person is also guilty of a Class D felony.

The bill creates several exemptions to the crimes related to explosives, destructive devices, detonators, and weapons of mass destruction. The crimes do not apply to military or law enforcement personnel acting within the scope of their official duties; to persons authorized to manufacture, deal in, transport, or use explosives, destructive devices, or detonators, with respect to the authorized activities; or to persons conducting research or education at a university, college, technical college, or secondary school if the activity is authorized by the institution and not otherwise prohibited by law. The crimes are also inapplicable to otherwise lawful activities related to fireworks, pesticides, ammunition for firearms, and explosives used in medicines.

***Penalties for crimes created by this bill***

<i>Crime</i>	<i>Maximum fine</i>	<i>Maximum term of confinement</i>	<i>Maximum sentence length</i>
Class A felony	N/A	Life	Life
Class B felony	N/A	40 years	60 years
Class C felony	\$10,000	10 years	15 years
Class D felony	\$10,000	5 years	10 years
Class E felony	\$10,000	2 years	5 years
Class A misdemeanor	\$10,000	9 months	9 months

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.